

made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in § 771.115(a), copies of the EA

shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA shall be prepared in accordance with the applicable provisions of that statute.

[52 FR 32660, Aug. 28, 1987, as amended at 70 FR 24470, May 9, 2005; 74 FR 12529, Mar. 24, 2009]

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the other agency's FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately

identified and assessed, the Administration will require appropriate environmental studies.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e) and the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the FEDERAL REGISTER. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process which may take into account any planning work already accomplished, in accordance with 23 CFR 450.212 or 450.318. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For the FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.111. For FTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c).

(e) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to